

1 CITY OF SANTA FE, NEW MEXICO

2 BILL NO. 2014-__

3 INTRODUCED BY:

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5
6 Councilor Lindell

7 Mayor Gonzales

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10 AN ORDINANCE

11 RELATING TO THE CITY OF SANTA FE ECONOMIC DEVELOPMENT PLAN
12 ORDINANCE, ARTICLE 11-11 SFCC 1987; AMENDING ORDINANCE NO. 1997-1 FOR
13 THE PURPOSE OF APPROVING AND ADOPTING A FIRST AMENDED AND RESTATED
14 LOCAL ECONOMIC DEVELOPMENT PROJECT PARTICIPATION AGREEMENT
15 BETWEEN THE CITY OF SANTA FE AND SANTA FE BUSINESS INCUBATOR, INC. TO
16 RESTRUCTURE AND ADD TO THE CONTRIBUTIONS AND OBLIGATIONS OF THE
17 CITY AND SANTA FE BUSINESS INCUBATOR, INC.

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19 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE.

20 Section 1. Short Title. This Ordinance shall be known as the “Santa Fe Business
21 Incubator Ordinance to ~~for~~ restructure ~~of the and add to the~~ contributions and obligations of the City
22 and Santa Fe Business Incubator, Inc.”

23 Section 2. Recitals.

24 A. The Local Economic Development Act, Sections 5-10-1 *et. seq.* NMSA 1978
25 explicitly permits municipalities to assist qualifying entities with economic development projects

1 through the use of public resources; and

2 B. The City of Santa Fe has complied with the requirements of the Local Economic
3 Development Act by adopting an Economic Development Plan Ordinance (11-11 SFCC (1987)).
4 Incorporated within that Ordinance are the City of Santa Fe's community economic development plan
5 and its economic development strategy for implementation.

6 C. On January 8, 1997, the governing body of the City of Santa Fe approved the
7 Economic Development Project Participation Agreement ("PPA") between the City and Santa Fe and
8 designated the Santa Fe Business Incubator, Inc. ("SBI") as a "Qualifying Entity" to receive funding
9 from the City for the Santa Fe Business Incubator project that would support the City's economic
10 development plan.

11 D. On June 30, 2004, the City of Santa Fe, in furtherance of the 1997 PPA, entered into
12 a Loan Agreement with the Secretary of Housing and Urban Development (HUD/Lender) borrowing
13 \$300,000 for the purposes of providing funding to the Santa Fe Business Incubator (SFBI as Sub-
14 Receipient) to construct Phase II and improve its facility on property donated to it by the City
15 ("Loan"). Currently, the remaining balance on the Loan is \$192,491.29. The Loan permits the City
16 to prepay the balance in full on August 1, 2014 with the funds wired before July 24, 2014. No later
17 than June 1, 2014, the City needs to send HUD a letter indicating notice of intent of Borrower prepay
18 off Loan Agreement (needs to be done between 90 and 60 days prior to August 1, 2014).

19 E. The SFBI is part of the mission of the City's Economic Development Division
20 because the Economic Development Plan supports the creation and maintenance of business
21 incubators in the City to promote and assist startup businesses.

22 F. For this reason, the City would like to prepay the balance of the Loan Agreement on
23 August 1, 2014. The Economic Development Division has identified a source of funds, held in
24 escrow, and is requesting a legal opinion on whether the escrowed funds can be used for the purpose
25 of prepaying the HUD loan in full.

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2 G. To accomplish the prepayment of the Loan, ~~The~~ City and SBI have determined that
3 there is a need to ~~amend paragraph 1 of the PPA~~ enter into the First Amended and Restated Project
4 Participation Agreement to restructure and add the contributions and obligations of the City and SBI.

5 **Section 3. Findings.** The governing body hereby finds:

6 A. The City of Santa Fe has determined that it is in the interest of the welfare of the
7 citizens of Santa Fe to enter into the First Amended Economic Development Project Participation
8 Agreement for the purposes of effectuating its Economic Development Plan and the Project.

9 B. In compliance with the City's economic development ordinance, 11-11 SFCC (1987),
10 the January 8, 1997 Project Participation Agreement and the First Amended and Restated Project
11 Participation Agreement between SBI and the City clearly state the following:

12 (1) The economic development goals of the project;
13 (2) The contributions of the City and SBI, Inc.;
14 (3) The specific measurable objectives upon which the performance review will
15 be based;

16 (4) A schedule for project development and goal attainment;
17 (5) The security being offered for the City's investment;
18 (6) The procedures by which the Project may be terminated and the City's
19 investment recovered;

20 (7) The time period for which the City shall retain a security interest in the
21 Project; and

22 (8) A "sunset" clause after which the City shall relinquish interest in and
23 oversight of the project;

24 (9) The designation of SBI as a qualifying entity.

25 **Section 4. Approval and Adoption of First Amended and Restated Project**

1 **Participation Agreement (PPA) between the City and Santa Fe Business Incubator, Inc.**

2 The governing body hereby approves the First Amended PPA which adds the City's financial
3 contribution of prepaying the Loan balance in full on August 1, 2014 with the funds wired before July
4 24, 2014. Loan is \$192,491.29. No later than June 1, 2014, the City shall send HUD a letter
5 indicating notice of intent of the City to prepay the Loan balance in full (needs to be done between 90
6 and 60 days prior to August 1, 2014). The First Amended PPA restructures the financial obligations
7 of Santa Fe Business Incubator and provides a repayment schedule for reimbursing the City for the
8 prepayment of the Loan balance. The First Amended and Restated Project Participation Agreement,
9 attached hereto as Exhibit "A", is hereby adopted.

10 **Section 5. Severability Clause.** If any section, paragraph, clause, or provision of this
11 Ordinance, or any section, paragraph, clause, or provision of any regulation promulgated hereunder
12 shall for any reason be held to be invalid, unlawful, or unenforceable, the invalidity, illegality, or
13 unenforceability of such section, paragraph, clause, or provision shall not affect the validity of the
14 remaining portions of this Ordinance or the regulation so challenged.

15 **Section 6. Effective Date.** This Ordinance shall become effective immediately upon
16 adoption.

17 APPROVED AS TO FORM:

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20 KELLEY A. BRENNAN, INTERIM CITY ATTORNEY

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22 *M/Melissa/2014 Bills/Santa Fe Business Incubator*